

OGC HAS REVIEWED.

5 December 1956

STATINTL

MEMORANDUM FOR: Mr. Houston

SUBJECT : [redacted] Staff Employee, Question
of Dual Compensation.

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1. Some time ago [redacted] brought to this Office a Government check for \$250.00 which he had received for services performed for [redacted]. This work consisted of his review of plans for a new building with particular reference to the adequacy of plans for a theater. [redacted] is one of the co-authors of the book which is the standard authority in English on Theater Planning. He was approached by a [redacted] official who asked the terms upon which he might undertake the foregoing review. He offered to study the plans and to conduct a conference for his normal minimum fee of \$250.00. This offer was accepted, the work performed, and payment made.

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2. It is recommended that this Office return the check for \$250.00 to [redacted] and advise him that he is authorized to keep this money. The Federal statutes and the Comptroller General decisions governing this situation make it clear he would not be in violation of any Federal law under the circumstances.

3. 31 Comp. Gen. 566, 6 May 1952, answered the inquiry of the Attorney General as to whether or not payment to psychiatrist in the employ of the Gallinger Hospital for other services rendered on behalf of the United States violated the dual compensation law. The opinion cited the relevant statutes as follows:

5 U.S.C. 58 (Section 6 of the Act of May 10, 1916).
"Unless otherwise specifically authorized by law, no money appropriated by any Act shall be available for payment to any person receiving more than one salary when the combined amount of said salaries exceeds the sum of \$2000 per annum."

5 U.S.C. 70 (Section 1765, Revised Statutes). "No officer in any branch of the public service, or any other person whose salary, pay, or emoluments are fixed by law or regulation, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any other service or duty whatever, unless the same is authorized by law, and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation."

The opinion in 31 Comp. Gen. 566 then stated (page 572):

"Since a person serving on a fee basis does not hold an office to which compensation is attached payment of such fees is not prohibited by section 6 of the 1916 act, as amended. Likewise, section 1765, Revised Statutes, does not apply to the payment of compensation on a fee basis when the fees are payable under separate and distinct employments. 16 Comp. Gen. 909, and cases therein cited. Consequently, the payment of fees from appropriated funds for services rendered on behalf of the United States in separate cases by psychiatrists employed at Gallinger Hospital does not violate the provisions of the dual compensation statutes."

4. The foregoing appears to be the latest decision of the Comptroller General and the statutes cited above have not been amended since that opinion was provided. The facts of the [redacted] case appear to be basically the same as those dealt with in 31 Comp. Gen. 566, the principal points of similarity being the clear fact that [redacted] performed services for [redacted] on a fee basis and those services had no connection with his regular employment by this Agency.

5. Additional authority for this conclusion is to be found in 30 Comp. Gen. 406 wherein employees of the Federal Government were authorized to receive compensation on a fee basis for acting in the pageant "Faith of our Fathers" under the auspices of the National Capital Sesquicentennial Commission. See also 22 Comp. Gen. 312, where the payment of fees to a physician serving as a consultant to the Veterans Administration and employed on a full-time basis by the Selective Service System was held not to violate Section 2 of the Act of July 31, 1904 (5 U.S.C. 62). This Section, which is still a part of Federal law, prohibits the holding of two Federal offices to which compensation is attached. The opinion holds that the physician in this case did not hold such an office while serving as consultant on a fee basis. The opinion holds, also, that 5 U.S.C. 58, quoted above, is not violated since fees do not constitute "salary" within the meaning of that statute.

BGC/NCF:jcf

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[redacted]
Assistant General Counsel